

ROLE OF STATES & TRIBES

ISSUE SUMMARY

EPA's environmental responsibilities are established through environmental statutes which authorize EPA to develop federal regulations to implement these statutes. The agency shares implementation responsibilities with states and tribes, including conducting activities such as permitting, monitoring, and enforcement. This paper provides a broad overview of our work with the states and tribes. This includes the 50 states, the District of Columbia, and the territories (American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands), hereafter referred to as "states;" and 574 federally recognized tribes. Several federal environmental laws authorize EPA to treat eligible federally recognized Indian tribes in a similar manner (i.e., as a state) for implementing and managing certain environmental programs.

APPROVAL OF STATES AND TRIBES TO IMPLEMENT ENVIRONMENTAL PROGRAMS

Most major pollution control laws (e.g., Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act) authorize the EPA to approve state governments to take significant programmatic responsibility for permitting, monitoring, and enforcement activities of the federal programs, upon their request. Programs that can be approved include water and air pollution, hazardous and solid waste, underground storage tanks, underground injection, and drinking water. Some of these laws also authorize EPA to approve tribal governments to take such responsibility.

Generally, EPA may only approve a state or tribal program if its program is equivalent or more stringent than the federal program. Approved states or tribes generally must have in place [laws and regulations that meet federal standards](#) and a [written agreement with EPA](#) describing program implementation responsibilities. An approved state or tribe has primary responsibility for implementing the specific environmental program, while EPA takes on an oversight role to assure effective state or tribal implementation. EPA also retains authority to monitor compliance and enforcement activities in approved states and tribes.

The EPA relies heavily on states and some tribes to implement compliance and enforcement programs. For example:

- Forty-nine states, five territories, and one tribe administer the Public Water System Supervision Program under the Safe Drinking Water Act (SDWA).
- Forty-eight states and two territories are authorized to administer the base Resource Conservation and Recovery Act (RCRA) hazardous waste program.
- Forty-seven states and one territory administer point source programs (National Pollutant Discharge Elimination System) under the Clean Water Act (CWA).
- Every state and territory, as well as one tribe, administers Title V of the Clean Air Act (CAA), designed to regulate the largest sources of air pollution.

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- In the Underground Storage Tank program, all states are the primary implementors of their programs even before they receive State Program Approval (SPA) from EPA. Forty-one states have been granted official SPA.

Conversely, there are no Federal Brownfields program standards or oversight, therefore states and tribes have the discretion to develop their own programs for the oversight of the assessment, clean up, and redevelopment of brownfields sites in their respective jurisdictions. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) section 128(a) grants are provided to states and tribes to help build the capacity of those State and Tribal programs. While EPA is not able to authorize states or tribes to implement the Superfund program (CERCLA), most states have their own state environmental cleanup laws.

While some tribes have been delegated authority, the overwhelming majority of federal environmental programs are directly implemented by EPA on behalf of tribes. Per the EPA Policy for the Administration of Environmental Programs on Indian Reservations (1984 Indian Policy), until tribal governments are willing and able to assume full responsibility for delegable programs, the agency retains responsibility for managing programs in Indian country.

AGENCY ORGANIZATION

While many state and tribal agencies largely mirror EPA organizationally, each state and tribe is unique in its governance structure. Not all EPA programs have their corresponding state or tribal counterparts located in the state or tribal environmental agency. For example, some states' drinking water programs are administered by the state health agency, and most states' pesticide programs are run out of their agriculture agencies. In California and several other states, the air program is delegated to local air districts.

STATE-EPA AND TRIBE-EPA NEXUS

Day-to-day interaction between states, tribes, and EPA occurs through EPA's 10 Regional offices. The Regional political leaders and career staff are the primary "faces" of EPA for state or tribal agency staff, and work closely with them on programmatic and budget issues.

The shared mission of state, tribal, and federal environmental programs is implemented in part through [EPA grants](#). On an annual basis, Congress authorizes and appropriates money for EPA's programs, most of which the agency passes on to states and tribes through grants. States and tribes work with their Regions to apply for the grant funds, and the Regions administer and oversee these grants. Most state programs rely heavily on EPA funding to carry out their missions; additional sources of income include state general funds and permitting fees.

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States, tribes, and EPA are increasingly thinking through ways to work collaboratively to set priorities, as state and federal budget constraints create challenges in supporting state and tribal efforts to administer environmental programs. Through the [E-Enterprise](#) Leadership Council, states, tribes, and EPA are working collaboratively to simplify, streamline and modernize the business of environmental protection. Together we are developing tools and systems to streamline implementation, including a new platform that modernizes environmental transactions and provides access to web resources. Further, the [National Environmental Performance Partnership System](#) uses joint agreements and grants in order to focus EPA and state/tribal resources on the most pressing environmental problems while taking advantage of the unique capacities of each partner to help achieve the greatest environmental and human health protections. EPA then translates these expectations into two-year National Program Guidances to capture joint priorities, provide state/tribal flexibilities, and align grant work planning to the extent possible.

STATE AND TRIBAL AGENCY LEADERSHIP

State agencies are typically headed by a Secretary, Commissioner, or Director who is appointed by the Governor (and in some states, confirmed by the state legislature or other governing body). [The Environmental Council of the States](#) is a nonpartisan, non-profit association whose membership comprises the state and territorial environmental agency leaders. EPA also works with appointed officials in the state public health agencies through [The Association of State and Territorial Health Officials](#) and appointed and elected officials in the state agricultural agencies through The [National Association of State Directors of Agriculture](#).

Tribes and tribal government structure varies widely and each tribe may have a different organizational format. However, many tribes follow the general structure identified above for state governments. That is, they typically have a Tribal Environmental Department that is chaired by an environmental director and overseen by either the Tribal Chairperson (Executive branch) or a Tribal Council (Legislative branch).

STATE AND TRIBAL MEDIA ASSOCIATIONS

Through EPA's program offices, the agency also interacts frequently with the "media associations," which is a term EPA uses to refer to air associations ([NACAA](#) and [AAPCA](#)), water associations ([ACWA](#), [NACWA](#), and [ASDWA](#)), and the land association ([ASTSWMO](#)). There are no national organizations that serve as counterparts to other major EPA offices, for example for compliance and enforcement matters, or for toxics or chemicals. Through these various associations, EPA and states are able to collaborate on a more granular level, to address regulatory and compliance needs and challenges, identify training needs, and share information and best practices.

EPA has an established national infrastructure to engage with and receive feedback from tribes. Each major program and regional office has an established tribal partnership group (e.g., Regional Tribal Operations Committee and the National

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Tribal Air Association). These groups work with program staff and engage with all levels of EPA senior leadership, including the Administrator, Assistant Administrators, and Regional Administrators, to provide feedback to the agency regarding implementation of programs in Indian country.

STATE AND TRIBAL PERSPECTIVE

Common areas of concern for the states, regardless of the administration, typically include issues related to preemption, unfunded mandates, budgets, cooperative federalism, and burden reduction.

Tribes may have a diverse range of perspectives on the many issues EPA works on. Common areas of concern for tribes are EPA implementation of environmental programs within Indian country, early and meaningful consultation with tribes on EPA actions and decisions, attention to tribal standards and practices where applicable, and tribal grants.